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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1951

No. 433

RUSSELL GIFFEN,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent,
and
RUTH P. GIFFEN,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY BRIEF FOR PETITIONERS.

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ARGUMENT IN REPLY.

ANSWERING RESPONDENT'S ARGUMENT THAT TAXPAYERS HAVE NOT SHOWN A CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

The argument on page 12 of respondent's brief misconceives the reason for the conflict between the holding below and decisions of other circuits.

Respondent claims there is no conflict because in the instant case the Courts below held the children were not "'owners' in any real sense". This argument actually proves there is a conflict.

The conflict exists because, as is undenied in respondent's brief, on facts which are in substance identical with those in the instant case Courts in other circuits[1] hold that the donees have become "owners" for income tax purposes. The contrary determination of that question of law by the Court below *creates* the conflict which forms the basis for taxpayers' petition for certiorari.

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[1] *Alexander v. Commissioner*, 190 F. (2d) 753 (C.A. 5th) (Br. 8-9); *Visintainer v. Commissioner*, 187 F. (2d) 519 (C.A. 10th), certiorari denied, No. 219, this Term (Br. 9-10); *Maiatico v. Commissioner*, 183 F. (2d) 836 (C.A. D.C.) (Br. 10-11); *Walsh v. Commissioner*, 170 F. (2d) 535 (C.A. 8th) (Br. 11).

CONCLUSION.

The petition for certiorari should be granted.

Dated, Fresno, California,
January 16, 1952.

Respectfully submitted,

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